IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

OP.No. 22507 of 2002(D)

PETITIONER:

P.M.USHA, D/O.G.MADHAVA VADHYAR,
AGED 41 YEARS, H.S.A.(MATHEMATICS),
S.N.M. HIGHER SECONDARY SCHOOL,
PURAKKAD,AMBALAPPUZHA, ALAPPUZHA DISTRICT.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:
---

1. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, HIGHER
EDUCATION DEPARTMENT, SECRETARIAT,
TRIVANDRUM.

2. THE DIRECTOR,
HIGHER SECONDARY EDUCATION,
HOUSING BOARD BUILDING, TRIVANDRUM.

3. THE MANAGER,
S.N.M. HIGHER SECONDARY SCHOOL,
PURAKKAD, AMBALAPPUZHA, ALAPPUZHA DISTRICT.

4. SRI.B.JAYADEV,
HIGHER SECONDARY SCHOOL TEACHER (MATHS)
S.N.M.HIGHER SECONDARY SCHOOL,
PURAKKAD, AMBALAPPUZHA, ALAPPUZHA DISTRICT.

BY ADV. SRI.S.SANAL KUMAR
GOVERNMENT PLEADER SMT.T.B.RAMANI
SRI.ANIL K.NARENDRAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Petitioner's Exhibits

Ext.P1: True copy of the G.O (Ms) No.162/98/G.Edn. of the Government dated 13-05-1998

Ext.P2: True copy of the Order No.C6-1421/HSE of the 2nd Respondent dated 14-06-1999

Ext.P3: True copy of the order No.Acd.C3/19217/HSE/2001 of the 2nd Respondeont dated 22-05-2002

Respondent's Exhibits

Ext.R3(a) : True copy of letter dated 25-1-2000 from the petitioner to the 3rd respondent

Ext.R3(b): True copy of mark list dated 24-11-1999 submitted by the petitioner to the 3rd respondent.

Ext.R3(c): True copy of provisional certificate dated 29-12-1999 submitted by the petitioner to the 3rd respondent

Ext.R3(d): True copy of application dated 11-6-2001 submitted by the petitioner to the 3rd respondent

Ext.R3(e): True copy of staff fixation order dated 5.1.2002 issued by the 2nd respondent to the 3rd respondent .

.....

Ext.R3(a) : True copy of Mark list dated 2411-1999 issued to the petitioner with respect of M.Sc Degree (Final) examination.

Ext.R3(b) : True copy of Provisional Certificate dated 29-12-1999 issued to the petitioner by the University of Kerala.

Ext.R3(c): True copy of representation dated 11.6.2001 submitted by the petitioner before the 3rd respondent .

Ext.R3(d): True copy of proceedings dated 5-2-2005 of the Director of Higher Secondary Education revising staff fixation in SNM Higher SecondarySchool, Purakkad, for the academic years 1999-00 to 2001-02.

//True copy//

es

THOTTATHIL B. RADHAKRISHNAN,, J.

O.P No. 22507 of 2002

Dated this the 10th day of September 2007

JUDGMENT

The petitioner and the 4th respondent are teachers of an aided school . That school was sanctioned with Higher Secondary section during the academic year 1998-1999. A post of HSST (Mathematics) became available and an appointment was made. During the succeeding academic year 1999-2000, a further vacancy arose. But that vacancy by virtue of the provisions of G. O(Ms) 8/91/G.Edn dated 1st February 1991 could be manned only by part-time HSST. Accordingly, the 4th respondent was appointed to that post in the academic year 2000-2001, that part-time post was upgraded because by that time the number of periods per week for mathematics in the Higher Secondary Section in that school rose to that of full time posts. Following the upgradation of the part-time post, the 4th respondent who was holding that post was treated as a full time HSST (Mathematics)

2. The petitioner who is a HSA(Mathematics) in that school challenged the retention of the 4th respondent as HSST (Mathematics) by contending that in terms of G.O (Ms) 162/98/G/Edn dated 13-5-1998 appointment as HSST could me made only by promotion from among HSAs towards the 25% quota of the HSST vacancies and the remaining 75% among the vacancies that are left unfilled by promotion, have also

to be filled up only by direct recruitment. Accordingly it is argued that on the date of occurrence of the vacancies of the second post of the full time HSST (Mathematics) during the academic year 2000-2001 the petitioner was available as fully qualified has for being promoted as HSST (Mathematics) and that even if she is not to be promoted, there has to be direct recruitment in terms of G,O (Ms)162/98/G.Edn. It is thus pointed out that the 4th respondent who was then a part-time HSST could not have been earmarked and promoted as fulltime HSST because such a transgression in service is not contemplated by the terms of G.O (Ms) 162/1998/G.Edn dated 13-5-1998 or G.O.(Ms) 18/1991/G/Edn dated 1-2-1991.

It has to be remembered that the aforesaid orders are merely executive orders of the Government issued in contemplation of impending amendment to the statutory rules and that the situation obtained by the aforesaid and other executive orders lead to a good amount of litigation before this Court and before the Apex Court. A reading of the judgment of the Apex Court in **M.M.Dolichan & Others Vs. State of Kerala & Others (AIR 2001 (1)SC 216)** dated 14-11-2000 shows that certain directions were issued for protecting those teachers who were appointed on the basis of the interim orders issued by the Apex Court. In this case whose appointments were carried out in terms of G.O (Ms) 162/1998/G.Edn. Such direction was later on extended by a Division Bench of this Court

until chapter 32 was introduced in Kerala Education Rules 1959 (herein after referred to as the KER)

From the aforesaid it can be seen that as on the date of occurrence of the second vacancy of a full-time or a senior HSST (Mathematics) in the school the parties stood governed by G.O (Ms) 18/91/G.Edn and G.O (MS) 162/1998. G.O. (Ms) 18/1991 only provides for the re-designation of the Headmaster as a principal and that there shall be one part-time post per subject if the number of periods per week is below 15 and one full time post if there are 15 or more periods per week, but below 26. The salary payable is also stated in that Government Order. It does not provide that HSSTs shall be appointed by promotions from HSAs. As per G.O(Ms) 162/1998/G.Edn HSSTs could be appointed by promotion or by direct recruitment in terms of that Government order. While G.O(Ms) 162/1998/G.Edn came into force on 13-5-1998, the post of part time HSST (Mathematics), was sanctioned in the school arose in 1999-2000. The petitioner was admittedly not qualified to be appointed by promotion to that post because she did not possess 50% marks in the qualifying examination. She also did not possess SET. Therefore, there was no illegality in the appointment of the 4th respondent as HSST as against the post sanctioned in 1999-2000 which incidentally was a part-time post because the total number of periods per week was below 15. But that by itself does not make her nothing other than a HSST. If that were so,

when that post of part time HSST was being upgraded as a full time post during 2000-2001 it did not call for retrenchment of the 4th respondent and thereby identifying the vacancy for appointment either by promotion or by direct recruitment in terms of G.O (Ms) 162/1998/G.Edn. This is all the more so, does not envisage the throwing out of any teacher among the HSSTs to provide a promotion for a HSA.

With the passage of time, on the introduction of Chapter 32 in KER the part-time and full time HSSTs came to be called as HSST (Junior) and HSST. HSST (Junior) is entitled to be promoted as HSST. This is clear indication of the legislative intention that it all alone a benefit policy of the state that a teacher who enters as a HSST either by promotion from the HSA category or by direct recruitment is entitled to continue as HSST and the entry as HSST (part time or junior) gives a preference for appointment as HSST full time. Therefore no illegality can be found in the retention of the 4th respondent as full time HSST as against the second post of HSST in the school in question. For the aforesaid reasons this original petition fails.

In the result, this Original Petition is dismissed. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE

es